

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 16cr265 (LMB)
)	
)	
NICHOLAS YOUNG,)	
)	
Defendant.)	
)	

**DECLARATION OF NICHOLAS D. SMITH IN SUPPORT OF NICHOLAS YOUNG’S
MOTION FOR AN ORDER TO SHOW CAUSE**

I, NICHOLAS D. SMITH, an attorney duly admitted to practice *pro hac vice* before this Court, hereby declare under penalty of perjury that the following is true and correct:

1. I am a partner in the law firm of David B. Smith PLLC, attorneys for defendant Nicholas Young, and a member of the bars of the State of New York, of Virginia, and of Washington, D.C. I respectfully submit this declaration in support of Mr. Young’s motion for an order to show cause.

2. On December 15, 2016, I participated in a conference call with Mr. Nicholas Lyon, senior litigation counsel for Yahoo! Inc., concerning the Rule 17 subpoena *duces tecum* served on Yahoo on November 30, 2016. During the call, I repeatedly attempted to engage Mr. Lyon in a discussion of the meaning of the phrases “reply email” and “in response to.” Before the topic could be resolved, Mr. Lyon abruptly stated he would terminate the conversation.

3. During the same call, I requested that Yahoo produce all of the emails from freedomforlibya777@yahoo.com to mohamed_2060@yahoo.com in June 2011. Mr. Lyon stated that Yahoo would not agree to that resolution, because, as it is currently drafted, the content field

in the subpoena calls for one specific email in June 2011. I agreed to provide Yahoo with a sworn affidavit from Defendant Young with the requested ownership information for the freedomforlibya777@yahoo.com account.

4. On December 16, 2016, I received a call from attorney Anna Hsia of the Zwillgen law firm, on behalf of Yahoo. I explained I was unable to hold a complete meet and confer session before Yahoo's internal litigation counsel terminated the call. I added that, rather than burden the Court and parties with a cycle of ever-refined subpoenas, I would like Yahoo to produce all of Mr. Young's June 2011 emails to mohamed_2060@yahoo.com.

5. Ms. Hsia stated she would see what she could do, and asked for the original motion to issue the Rule 17 subpoena and the accompanying order.

6. Ms. Hsia did not respond to my email to her dated 12/17/16.

7. I called Ms. Hsia on December 19, 2016. In the interest of resolving the dispute as quickly as possible, I agreed with Ms. Hsia's proposal to file a consent motion to compel the June 2011 emails sent from freedomforlibya777@yahoo.com to mohamed_2060@yahoo.com. I said I would obtain a court order and send it to Ms. Hsia. Ms. Hsia agreed. Ms. Hsia did not request to review – and I did not promise to send – a draft motion to compel for Ms. Hsia's review. Ms. Hsia never threatened sanctions against Mr. Young.

8. I called Ms. Hsia on December 23, 2016, at around 3:30 pm PT. She did not answer.

9. I called Ms. Hsia on December 26, 2016, in the afternoon PT. She did not answer. I left a voicemail message stating that I wished to resolve the dispute quickly.

Executed in New York, New York on December 26, 2016.

Respectfully submitted,

/s/ Nicholas D. Smith
Nicholas D. Smith